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American Advocacy - Foundation of the American Dream

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**United States District Court for the Northern District of Ohio*

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American Advocacy — Foundation of the American Dream

JUDGE THOMAS D. LAMBROS*

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

The Declaration of Independence

For two hundred years the United States of America has proudly advanced the ideals set forth in the *Declaration of Independence*. These ideals have been carried forward by many groups of Americans throughout our nation's history. However, one group of Americans more than any other has consistently sought to fulfill these ideals in the face of perpetual conflict, the American advocates. Having championed America's honor for two hundred years it is only proper that in this bicentennial year America honor her champions.

It has been said that the history of all society could be written as a chronicle of wars and of trials, for such events constitute the most dramatic of confrontations between men.¹ The courtroom, however, is a forum of perpetual conflict and thus surpasses even the battlefield in the scope of its influence upon men and nations. The courtroom, indeed the entire judicial system, is the vehicle by which the advocate transforms idealism into reality.

The American judicial system has recently been subjected to a great deal of criticism. Some of our leading jurists have discussed abolishing the civil jury system, increasing the use of referees, special masters and administrative judges in place of trial judges, and restricting access to the Courts for certain cases.² These recommendations have been propounded in the interests of expediency, efficiency and economy. Such recommendations, however, are result oriented and discount the inherent values to be derived from the judicial system as a process in and of itself. The judicial

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¹B. AYMAR & E. SAGARIN, A PICTORIAL HISTORY OF THE WORLD'S GREAT TRIALS at vii (1967).

²See, e.g., H. JACOB, JUSTICE IN AMERICA 128-41 (2d ed. 1972); Burger, *Annual Report on the State of the Judiciary*, 62 A.B.A.J. 443 (1976); Chief Justice Burger *Proposes First Steps Toward Certification of Trial Advocacy Specialists*, 60 A.B.A.J. 171 (1974); Hogan, *Some Thoughts on Juries in Civil Cases*, 50 A.B.A.J. 752 (1964); Ross, *The Civil Jury System*, DEF. RESEARCH INST. 5 (1971). See also *The Federal Magistrates Act of 1968*, 28 U.S.C. §§ 631 *et seq.* (1970), as amended Pub. L. No. 94-577, 90 Stat. 2729 (Oct. 21, 1976) which gives a judge power to appoint magistrates to determine certain matters).

system serves valuable functions that transcend the consequences of particular trials and decisions.

The trial is itself a medium of communication which instills respect and confidence in our democratic society through individual participation in the judicial process. Our system is premised on the individual's right to his day in court, represented by counsel of his choice, and judged by a jury of his peers. The responsibility for investigation, development, and presentation of propositions of law and fact is placed on the parties themselves because they are most strongly motivated to bring all material evidence and argument to the Court's attention.³ This individual participation is essential to the growth and improvement of not only our judicial system, but our entire nation. In words attributed to Alexis de Tocqueville:

[T]here can be no universal respect for law unless all Americans feel that it is their law — that they have a stake in making it work. When large classes of people are denied a role in the legal process — even if that denial is wholly unintentional or inadvertent — there is bound to be a sense of alienation from the legal order. . . .⁴

The trial court provides the forum for the interaction between citizens and governments which is the ultimate prerequisite to a democratic society. Only this forum, with its historical, professional and ethical heritage, can fully instill in litigation participants the duties they are bound to discharge toward society and the part which they play in government. Further, each of the participants, judge, jury, advocate and litigant, plays a vital role in communicating the responsibilities and obligations manifested in the trial forum to the public at large. It is this individual participation and communication which adds the popular element to the judicial process which prevents it from becoming isolated from the general public.

There are criticisms currently directed at our judicial system, but these are selective criticisms which isolate and focus upon particular elements of our judicial process. The judicial system must be evaluated and appraised in its entirety. The usefulness of a system is not governed by its age or components, but by its ability to adapt to the needs of the people who resort to it throughout the ages. The ability of our judicial system to serve the needs of Americans has been demonstrated for two hundred years. Although criticisms must be evaluated and reforms projected where necessary, great caution should be exercised in implementing any changes in our judicial system which would have the effect of limiting individual participation in the judicial process.

The pivotal figures in our judicial system are the advocates, for they are the cornerstone upon which the judicial system is built. The role of the advocate is best expressed in a quote attributed to Justice Charles Desmond:

³Teitelbaum, *The Advocates Role in the Legal System*, 6 NEW MEX. L. REV. 1, 12 (1975).

⁴Kaufman, *A Fair Trial — The Essence of Justice*, 51 JUDICATURE 88 (1967).

I think we are keepers of a dream of our time, one of the oldest, the best dream for the human race, a dream that was old when the world was young, a dream that will never die, a dream of open courts dispensing equal justice, the dream of peace and good will through law.⁵

The American advocates have fulfilled this role admirably. They are the instruments by which individuals peacefully assert their rights and resolve their conflicts. This duty of the advocate, to preserve individual rights through the enhancement of justice, is basic to the survival of our democratic system. As Erkiné said in his defense of Thomas Paine:

From the moment that any advocate can be permitted to say that he will or will not stand between the Crown and the subject arraigned in the Court where he daily sits to practice, from that moment the liberties of England are at end.⁶

Through the efforts of the advocate our adversary system of justice has emerged as the fairest, most equitable judicial system in existence today. Although all innovation is not progress, the advocate has been innovative and creative and has enlarged the meaning of freedom and respect for the individual. That the end purpose of law is not to abolish or restrain, but to preserve and expand freedom is an ideal which has become reality. The American advocate has consistently accepted the challenges of each decade and has helped mold the law to not only satisfy the demands of each era, but to also form a foundation for posterity to build upon. The advocate has fulfilled his obligation to reflect the feelings of the public. In addition he has also met his responsibility to assist the public in understanding the law and to improve social conditions through the law.

There are critics of the role the American advocate plays in our judicial system. Many of these critics have suggested that our system adopt certain aspects of the English solicitor or barrister format. However, any multitiered system of representation which adheres to the philosophy of a specialized trial bar creates a "buffer" layer which restricts the direct participation of the client in the judicial process. Such a specialized division of trial attorneys removes the personal identification and involvement between clients and counsel which is so vital to the American judicial system.

Those who suggest that we should borrow from England's system of solicitor and barrister which abolishes jury trials in most civil cases need only look at the relative positions of America and England as models of free societies. There is no contest; America excels without all the pomp and circumstance of the English system.

The most prominent of these critics is Chief Justice Warren Burger. In

⁵Address by Campbell Thornal, Chief Justice, Supreme Court of Florida, American Academy of Trial Lawyers, in Miami Beach (July 30, 1965).

⁶Rex v. Paine, 22 Howell's State Trials 358, 412 (1792).

advancing the view that we must take positive steps to promote qualified courtroom advocacy skills, he stated that "our failure to do so has helped bring about the low state of America trial advocacy and a consequent diminution in the quality of our entire system of justice."⁷

Although I concur that improving the quality of advocacy and in turn our system of justice is the continuing challenge of society and the organized bar, I cannot embrace the Chief Justice's view that American trial advocacy is at a low state nor his view that the quality of our entire system of justice has diminished. The views of the Chief Justice imply that lawyers and our system of justice have seen better days. Not so!

American justice, developed and nurtured by a most democratic and independent system of advocacy, has become a pattern for others to follow. It is America's most stable force. The judicial travesties of Scottsboro⁸ and Sacco-Vanzetti⁹ have darkened our past, but through the excellence of our advocates and jurists American justice has emerged from the "dark ages" of decades past. There is every reason to assume that our system shall continue to improve without being hampered by needless regulation and certification of our advocates as suggested by the Chief Justice as a means to improve the system of trial advocacy.¹⁰

The American advocates have improved our judicial system and the quality of advocacy presented to our courts by improving themselves. Through their obligations to client, court, and community the advocates have subjected themselves to the highest standards of professional responsibility and ethics. Further, the American advocates have consistently endeavored to raise these standards. Such self-discipline is infinitely preferable to the establishment of a specialized division of trial attorneys. This self-discipline requires the most dedicated of individuals, for the advocates' obligation to improve our system of justice is one which never ends. On the whole our advocates have fulfilled this obligation admirably. Although their record is not unblemished, it nonetheless reflects two hundred years of fine service. Our advocates have met the tests of time and comparison. They have excelled! They are the best! Perhaps their qualities are best summed in the words of Harrison Tweed:

I have a high opinion of lawyers. With all their faults, they stack up well against those in every occupation of profession. They are better to work with or play with or fight with or drink with, than most other verities of mankind.¹¹

⁷Chief Justice Burger Proposes First Steps Toward Certification of Trial Advocacy Specialists, *supra* note 2, at 172.

⁸See generally *Norris v. Alabama*, 294 U.S. 587 (1934); *Powell v. Alabama*, 287 U.S. 45 (1932).

⁹See generally *Commonwealth v. Sacco and Vanzetti*, 261 Mass. 12, 158 N.E. 167 (1927).

¹⁰See Chief Justice Burger Proposes First Steps Toward Certification of Trial Specialists, *supra* note 2, at 6.

¹¹Speech by Harrison Tweed accepting the presidency of the bar of the City of New York (May 10, 1945), quoted in E. GERHART, *QUOTE IT!* 383 (1969).

American advocacy has transformed the ideals of our heritage into reality and thus set the course for fulfillment of the American dream: Life, Liberty and the pursuit of Happiness. The American advocate is the standardbearer of our dream.

